

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. BKY 04-32869

Marc Harold Ferris
and Tracie Kay Ferris,

Chapter 13 Case

Debtors.

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO
CONFIRMATION OF DEBTORS' MODIFIED CHAPTER 13 PLAN**

Provincial Bank, by its undersigned counsel, files the following supplemental memorandum in support of its objection to the Debtors' Chapter 13 Plan, as modified, in the above-captioned case.

INTRODUCTION

Upon review of the Debtors' modified plan ("Plan") Provincial renews its objection to its treatment under the Plan. Provincial Bank has no objection to the timing of payments under the Plan with regards to the arrearages, however, the Plan continues to violate 11 U.S.C. § 1325(a)(5). The Debtors fail to account for the accrual of interest on the outstanding balance and fail to include attorneys' fees. As a consequence, Provincial Bank is not receiving an amount equal to the present value of its oversecured claim.

FACTS

The facts are as stated in the Objection to Confirmation of Chapter 13 Plan by Provincial Bank dated July 9, 2004 ("Objection") and incorporated herein by reference. All capitalized terms in the Objection have the same meaning herein.

ARGUMENT

A. The Plan Does Not Comply With 11 U.S.C. §1325.

11 U.S.C. §1325(a)(5) provides in pertinent part:

(a) Except as provided in subsection (b), the court shall confirm a plan if-- . . .

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder . .

In addition, 11 U.S.C. § 506(b) provides:

To the extent that an allowed secured claim is secured by property the value of which, after recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim and any reasonable fees, costs, or charges provided for under the agreement under which the claim arose.

In light of § § 1325(a)(5) and 506(b) and the terms of the respective Contracts entered into by the Debtor Marc Ferris, the Debtors' Plan as proposed is not confirmable. Provincial has not accepted the Plan and the Debtor has failed to surrender the property. In addition, the value, as of the effective date of the Plan, of the property to be distributed under the Plan on account of Provincial's claim *is less* than the allowed amount of such claim. The Plan proposes to make payments to Provincial on account of its claim in an amount totaling \$21,087.11. This amount does not take into consideration the accrual of interest at 8% or Provincial Bank's attorneys' fees

to date. Indeed, according to Schedule A attached to the Plan, it appears that the scheduled payments will not even total \$21,087.11. The Debtors' have failed to include attorneys' fees in the Plan which Provincial estimates will be \$1,500 as of the confirmation date. See 11 U.S.C. §506.

Therefore, the Plan is not confirmable because the value of the property to be distributed to Provincial on account of Provincial's claim is substantially less than Provincial's allowed claim.

CONCLUSION

For the foregoing reasons, Provincial Bank requests that the Court deny confirmation of the Debtors' Chapter 13 Plan.

RIDER BENNETT , LLP

Dated: July 29, 2004

By /e/ William P. Wassweiler .
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AFFIDAVIT OF SERVICE

In Re: Marc Harold Ferris and Tracie Kay Ferris, Debtors

Bky No: 04-32869

Our File No: 15358/107

PATRICIA A. GARVEY, of St. Paul, Minnesota, County of Ramsey, being duly sworn on oath, deposes and states that she is a legal secretary in the office of Rider Bennett, LLP, 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota 55402, and that on the 30th day of July, 2004, she did serve the following documents:

1. Supplemental Memorandum of Law in Support of Objection to Confirmation of Debtors' Modified Chapter 13 Plan, and

2. Affidavit of Service,

in the above-referenced matter, via United States Mail, upon the following entities at their last known addresses:

Elizabeth A. Cloutier, Esq.
CLOUTIER & CLOUTIER, LLP
608 2nd Avenue South, Suite 250
Minneapolis, MN 55402

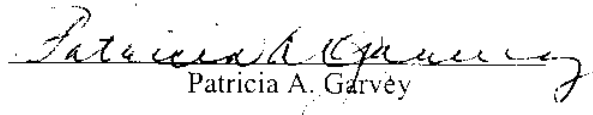
Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 South 6th Street, Suite 310
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via United States Mail

via United States Mail

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

via United States Mail


Patricia A. Garvey

Subscribed and sworn to before me

this 30th day of July, 2004.


Notary Public

